

# EXHIBIT B

People - Ross - Direct

1 THE COURT: Thank you.

2 (Whereupon, the witness was excused from  
3 the witness stand.)

4 MR. SCHALK: Detective Matthew Ross.

5 D E T E C T I V E M A T T H E W R O S S, a witness  
6 called on behalf of the People, having been duly sworn,  
7 testified as follows:

8 THE CLERK: In a clear, loud voice, state  
9 your name, shield and command.

10 THE WITNESS: My name is Detective Matthew,  
11 middle initial Q, last name Ross, R-O-S-S, shield  
12 834, Nassau County Police Third Squad.

13 THE CLERK: Thank you.

14 MR. SCHALK: May I inquire, your Honor?

15 THE COURT: Please.

16 DIRECT EXAMINATION

17 BY MR. SCHALK:

18 Q Detective, keep your voice at that level and it  
19 would be great so everybody in here can hear you.

20 A Okay.

21 Q Thank you. Make sure you speak into the  
22 microphone.

23 How long have you been a member of the Nassau  
24 County Police, sir?

25 A Nineteen years.

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1 Q How many of those 19 years have you been a  
2 detective in the Third Squad?

3 A Fourteen.

4 Q Could you give a brief description of your duties  
5 and responsibilities as a detective in the Third Squad?

6 A We handle everything, as little as leaving the  
7 scene of an accident to a homicide.

8 Q Do your duties and responsibilities include  
9 investigating crimes that occur in Hempstead?

10 A Yes.

11 Q As part of your duties and responsibilities as a  
12 detective, do they potentially include conducting lineups  
13 as it pertains to criminal investigations?

14 A Yes.

15 Q How many lineups have you conducted over the  
16 course of your 19-year career as a police officer and  
17 detective?

18 A Close to a hundred.

19 Q Detective, I want to direct your attention to the  
20 month of August, 2008. Was your assistance requested in  
21 conducting a lineup involving a defendant by the name of  
22 Josiah Galloway?

23 A Yes.

24 Q Do you see Mr. Galloway in court today?

25 A Yes, I do.

BB



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1 Q Could you point to him and identify an article of  
2 clothing that he is wearing?

3 A Wearing a tan shirt.

4 MR. SCHALK: Your Honor, may the record  
5 reflect in-court identification of the defendant?

6 THE COURT: The record will so reflect.

7 Q Detective Ross, could you, please, tell the jury  
8 the first date that a lineup was attempted to be arranged  
9 and conducted involving the defendant?

10 A August 5th.

11 Q When on August 5th, 2008, did that lineup get  
12 conducted?

13 A No.

14 Q The reason for that lineup not being conducted  
15 that day?

16 MR. BREWINGTON: Objection to the form of  
17 that question.

18 THE COURT: All right.

19 Q Why did the lineup not go through that day?

20 A The defendant had changed his appearance.

21 MR. BREWINGTON: Objection.

22 THE COURT: Sustained.

23 MR. BREWINGTON: Move to strike.

24 THE COURT: Granted.

25 Q What did you notice about the defendant on

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1 August 5th, 2008, when he was in your presence?

2 A His hair had changed.

3 Q what do you mean by his hair had changed?

4 MR. BREWINGTON: Objection to that.

5 No, Judge. I'll deal with it on  
6 cross-examination, for sure.

7 THE COURT: Okay.

8 Q what do you mean by that?

9 A On August 5th, he had an Afro.

10 Q what are you comparing that change to?

11 A His arrest photo.

12 Q In that photograph, what did his hair look like?

13 A Similar to what it looks like today, cornrows,  
14 short, tight to the head.

15 Q when -- so when, if ever, on August 5th, 2008,  
16 were Wilmer Hernandez or Jorge Anyosa ever shown this  
17 defendant?

18 A They never came to the precinct that day.

19 Q Now, I want to direct your attention to  
20 August 14th, 2008. Was a lineup conducted that day?

21 A Yes.

22 Q Was that the next scheduled lineup involving this  
23 defendant?

24 A Yes.

25 Q Just so the record is clear, when, if ever,



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1 before August 5th, 2008, was a lineup ever attempted to be  
2 conducted or scheduled involving the defendant?

3 A Never.

4 Q Directing your attention to August 14th, 2008,  
5 tell the members of the jury how the lineup was arranged  
6 and who was requested to come to the Third Squad?

7 A I ran the lineup on August 14th. Starting with  
8 the lineup, I was responsible for getting the fillers,  
9 making the arrangements for the victim and witness to  
10 arrive at the Third Squad, the times. I was responsible  
11 for getting the lineup room ready, speaking with the ADA,  
12 speaking with the defense attorney, and actually  
13 conducting the actual lineup.

14 Q Who was assisting you throughout the course of  
15 this lineup?

16 A Detective Dluginski. It was his case.

17 Q Just so the record is clear, where is the Third  
18 Squad located?

19 A 214 Hillside Avenue, Williston Park.

20 Q How were fillers obtained for purposes of this  
21 lineup?

22 A They were all police officers that I obtained by  
23 calling each precinct and some village police departments  
24 to get the fillers that matched the description.

25 Q Were they wearing police uniforms or civilian

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1 clothes?

2 A When they arrived at the station house, they were  
3 in police uniforms. They were then dressed down and they  
4 actually sat in the lineup just with their T-shirts and a  
5 pair of pants.

6 Q When, if ever, did either Wilmer Hernandez or  
7 Jorge Anyosa view any of those fillers before the lineup  
8 was conducted?

9 A They never did.

10 Q Where were the witnesses located prior to a  
11 lineup being conducted?

12 A The witnesses, once they arrived at the Third  
13 Precinct, they were put into the inspector's office, which  
14 is a big office on the second floor of the precinct which  
15 has five or six individual offices in there. They were  
16 each put into an office.

17 Q Did those two witnesses, Jorge Anyosa and Wilmer  
18 Hernandez, arrived separately or together?

19 A Separately.

20 Q Were they in the same room or different rooms?

21 A Different rooms.

22 Q When, if ever, that day are you aware of Jorge  
23 Anyosa and Wilmer Hernandez having any contact before  
24 viewing that lineup?

25 A They had none.

BB



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1 Q would you, please, tell the members of the jury  
2 what instructions were given by you to Mr. Hernandez and  
3 Mr. Anyosa before they viewed the lineup?

4 A When I met with each one of them in the office,  
5 they were concerned -- they were concerned about --

6 MR. BREWINGTON: Objection.

7 THE COURT: Sustained.

8 Q What instructions did you give them?

9 A The instructions that I gave them, that they were  
10 going to be brought from the office they were at, by  
11 myself and Detective Dluginski, they were going to be  
12 brought into the lineup room, or the viewing room.

13 They were told that the room would be dark and  
14 they were going to look through a glass where they cannot  
15 be seen. I advised them that there were going to be six  
16 individuals with similar characteristics. They were all  
17 going to be seated and they were all going to have a sheet  
18 across their body and the only thing that they were going  
19 to be able to see -- or he was going to see was their  
20 face.

21 I then told them I need them to go up to the  
22 window with Detective Dluginski, I need them to look at  
23 all six individuals, I need them to take their time, and,  
24 if they identify somebody, tell me what number and where  
25 they identify that person from.

BB



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1 Q As it pertains to this particular lineup, was any  
2 other article of clothing used on the six individuals in  
3 the lineup?

4 A Yes.

5 Q What was that?

6 A Hats.

7 Q What color hats?

8 A White.

9 Q Were they all the same hat or different?

10 A All the same.

11 Q During your testimony, you said that a room was  
12 dark. What room specifically were you talking about?

13 A The room that we were going to go into. It's  
14 called a viewing room.

15 Q How about the lighting in the lineup room?

16 A It's well lit.

17 Q Detective, do you remember the exact time that  
18 the defendant arrived at the Third Squad that day or the  
19 Third Precinct?

20 A Myself and Detective Dluginski went to get him  
21 sometime between eleven and twelve o'clock.

22 Q When he was at the precinct, when, if ever --  
23 withdrawn.

24 Where was he situated in the precinct before the  
25 lineup?

BB

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1           A    He was seated in the arrest room in the detective  
2   squad on the second floor.

3           Q    When, if ever, did Jorge Anyosa or Wilmer  
4   Hernandez have access to viewing that room or being in  
5   that room before the lineup was conducted?

6           A    They had no access or never were.

7           Q    Can you tell the jury now how the lineup  
8   participants were arranged in the lineup room before the  
9   witnesses viewed them?

10          A    Once we were ready to proceed with the lineup,  
11   myself and Detective Dluginski brought the defendant from  
12   the arrest room into the lineup room. The defendant,  
13   along with his defense attorney, picked the number he  
14   wanted to sit at, which we accommodated, and the defendant  
15   sat at that number.

16          Q    What number did he choose to sit at?

17          A    Number five.

18          Q    Who was representing the defendant throughout the  
19   course of that lineup?

20                   MR. BREWINGTON:  Objection.

21                   THE COURT:  Why?

22                   MR. BREWINGTON:  What relevance does that  
23   have?

24                   THE COURT:  Sustained.

25          Q    Just so -- without giving the name, was somebody

BB



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1 representing the defendant as an attorney at that lineup?

2 A Yes.

3 Q Prior to the witnesses' viewing of the lineup,  
4 was a photograph taken?

5 A Yes.

6 Q who took that photograph?

7 A Detective McLaughlin from Crime Scene.

8 MR. SCHALK: May I have this marked as  
9 People's 33 for identification purposes.

10 (Whereupon, the above-mentioned item was  
11 marked as People's Exhibit 33 for identification  
12 only.)

13 COURT OFFICER: People's 33 marked for ID.

14 MR. SCHALK: May I, please, have it shown to  
15 the witness? Thank you.

16 Q Detective, showing you what has been marked as  
17 People's 33 for identification, do you recognize that  
18 photograph, sir?

19 A Yes.

20 Q what do you recognize that photograph to be?

21 A That's the photograph of the lineup moments  
22 before the first witness viewed it.

23 Q Is that a fair and accurate photostatic copy of  
24 the way that lineup appeared on August 14th, 2008, in the  
25 Third Squad?

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1 A Yes.

2 MR. SCHALK: Your Honor, I move People's 33  
3 for identification into evidence.

4 THE COURT: Please show it to  
5 Mr. Brewington.

6 MR. BREWINGTON: May I inquire, your Honor?

7 THE COURT: Yes.

8 VOIR DIRE EXAMINATION

9 BY MR. BREWINGTON:

10 Q Sir, that item, 33, is that what you saw when you  
11 looked through the glass?

12 A It's pretty close to what I saw, yeah.

13 MR. BREWINGTON: No objection. I'll deal  
14 with it on cross-examination.

15 THE COURT: Received.

16 (Whereupon, People's Exhibit 33 was marked  
17 and received in evidence.)

18 COURT OFFICER: People's 33 marked in  
19 evidence.

20 MR. SCHALK: May I have it shown to the  
21 witness again?

22 CONTINUED DIRECT

23 BY MR. SCHALK:

24 Q Detective Ross, as it pertains to that last  
25 question by defense counsel, as it pertains to People's 33



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1 now in evidence, what can you tell the jury with regards  
2 to the shadowing of the top right corner of that  
3 photograph?

4 MR. BREWINGTON: Objection. Leading.

5 THE COURT: Sustained.

6 Q What can you tell them about the photograph, in  
7 response to your answer -- I believe, you said, pretty  
8 much what you saw through the glass that day.

9 MR. BREWINGTON: Inappropriate. Leading  
10 and -- objection.

11 THE COURT: Overruled.

12 A The photograph -- the room was lighter than the  
13 photograph shows. You can see shadowing over number one  
14 and you can see shadowing over the number six. The lineup  
15 room is extremely well lit.

16 MR. SCHALK: Your Honor, at this time I  
17 would like to publish People's 33 in evidence to the  
18 jury.

19 THE COURT: Yes.

20 (Whereupon, the above-mentioned item was  
21 published to the jury.)

22 COURT OFFICER: People's 33 has been  
23 published to the jury.

24 MR. SCHALK: Thank you, Officer.

25 Q Detective, People's 33 shows the six participants

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1 of the lineup, the white hats you testified about earlier?

2 A Correct.

3 Q Whose decision was it to use the white hats for  
4 purposes of the lineup?

5 A Well, it was my decision, along with the ADA,  
6 Mr. LaRocca, and then we conferred with the defense  
7 counsel.

8 Q What was the purpose of using the white hats for  
9 this lineup?

10 A To keep it fair.

11 MR. BREWINGTON: Objection.

12 THE COURT: Overruled.

13 Q What do you mean by that?

14 MR. BREWINGTON: Objection.

15 THE COURT: Overruled.

16 A We wanted the participants all to look the same  
17 so when the person viewed, or the witness viewed, it would  
18 be fair to the defendant.

19 Q What is the distance, I guess, from this viewing  
20 room, the glass you talked about, to the back wall where  
21 the participants were seated?

22 A I measured it yesterday. It's 8 feet.

23 Q Who viewed the lineup first, Mr. Anyosa or  
24 Mr. Hernandez?

25 A Mr. Anyosa viewed the lineup first.



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1 Q Are you aware of the approximate time that took  
2 place?

3 A Twenty-three -- oh, the time was at 16 -- four  
4 o'clock in the afternoon, 1600 hours.

5 Q Without telling us what he said, was Mr. Anyosa  
6 able to make an identification of one of the six  
7 individuals?

8 A Yes.

9 Q When that was done, where was Mr. Anyosa taken?

10 A He was taken back to the office where he was and  
11 he sat back down with Detective Strange.

12 Q When Mr. Anyosa made -- viewed the lineup, what  
13 number position was the defendant seated in?

14 A Number five.

15 Q Again, who chose to sit in that seat?

16 A The defendant and his defense attorney.

17 Q Approximately what time did Wilmer Hernandez view  
18 the lineup?

19 A At 4:03.

20 Q Without telling us what he said, was an  
21 identification made of an individual of those six  
22 participant in that lineup?

23 A Yes.

24 Q For purposes of Mr. Hernandez's viewing of that  
25 lineup, what position was the defendant seated in?

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1 A Number five.

2 Q Who chose to sit in that seat for that lineup?

3 A The defendant and his attorney.

4 Q What happened after Mr. Hernandez viewed the  
5 lineup?

6 A He was taken back to the office where  
7 Detective Darienzo was and a statement was taken.

8 MR. SCHALK: May I have this marked as  
9 People's 34 for identification purpose?

10 I'm sorry. It's already in.

11 Q Detective, showing you what is in as Defendant's  
12 H, Detective, is that photograph that's in evidence as  
13 Defendant's H a fair and accurate photostatic copy of the  
14 appearance of the defendant on August 5th, the date that  
15 you first set this lineup for?

16 A Yes.

17 MR. SCHALK: Nothing further.

18 THE COURT: Mr. Brewington?

19 MR. BREWINGTON: Thank you, Judge.

20 CROSS-EXAMINATION

21 BY MR. BREWINGTON:

22 Q Detective, I'm going to encourage you, again, to  
23 keep your voice up, because it's important that everybody  
24 hears what you have to say.

25 A Okay.

BB



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1 Q All right?

2 A Fine.

3 Q Let's start with the description of the people  
4 that you were trying to get as fillers. Start there.  
5 okay?

6 Let me ask you, what was the description you were  
7 working off of?

8 A The description that I had received was a male  
9 black, short hair, medium skin.

10 Q How tall?

11 A There was no height description.

12 Q And you said that when Mr. Galloway came on, I  
13 think you said August 5th, that his hair had changed,  
14 right?

15 A His hair was that Afro I just viewed.

16 Q I just want to be clear. No. Just answer my  
17 question. You said his hair changed, right? Didn't you  
18 say that earlier?

19 A The hair was different, yeah.

20 Q Now, you said it had changed from his arrest  
21 photo, right?

22 A Correct.

23 Q And the arrest photo had cornrows, right?

24 A Correct.

25 Q Therefore, even though you were working with a

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1 description of a person with short hair, you knew that the  
2 defendant, at the time he was arrested, had cornrows,  
3 right?

4 A Correct.

5 Q So you were working from the description from the  
6 sketch, right?

7 A No. I was --

8 Q I'm sorry.

9 A You asked me a question, if you will allow me to  
10 answer --

11 Q You said no, right? You were working from a  
12 description someone else gave you, right?

13 A Correct.

14 Q Who gave you that description?

15 A Detective Dluginski.

16 Q And it was Detective Dluginski who told you to  
17 get fillers with people with short hair, right?

18 A He didn't tell me anything. He told me the  
19 description of the person.

20 Q And he didn't tell you anything about cornrows,  
21 did he?

22 A No.

23 Q You saw cornrows in the arrest photo, right?

24 A Correct.

25 Q You weren't on this case, were you?



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1 A I had nothing to do with this case.

2 Q Well, you obviously did because you saw his  
3 arrest photo. You testified to that, didn't you?

4 A I had nothing --

5 Q Sir, didn't you see his arrest photo?

6 A Yes.

7 Q And you testified to that earlier, right?

8 A Yes.

9 Q So when you did this lineup, you already knew  
10 that Mr. Galloway didn't have short hair based on his  
11 arrest photo, right?

12 A Wrong.

13 Q When he came on August 5th, you say that he had  
14 an Afro, correct?

15 A Correct.

16 Q Let me ask you this question. Can an  
17 African-American man keep his hair in cornrows forever?

18 MR. SCHALK: Objection.

19 THE COURT: Sustained.

20 Q Do you know how important it is to take hair out  
21 of cornrows for some period of time?

22 MR. SCHALK: Objection.

23 THE COURT: I'll take a yes or no.

24 A No.

25 Q His hair was his natural hair, wasn't it?

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1           A    I don't know if that's his natural hair. I can  
2   tell you what it looked like that day.

3           Q    You didn't even check though, did you, because  
4   you wanted to make sure that he didn't do anything which  
5   was going to change his appearance from his arrest photo,  
6   right? Isn't that right? That's what you told the jury.

7           A    I don't understand the question.

8           Q    Didn't you tell the jury that the reason why the  
9   August 5th lineup didn't take place was because his hair  
10   was different from the arrest photo, right?

11          A    Yes.

12          Q    And then, on the 14th, his hair was like it was  
13   in the arrest photo, right?

14          A    Close -- yes.

15          Q    And then you put a hat on his head anyhow, right?

16          A    Correct.

17          Q    So when you say you wanted to be fair to the  
18   defendant, you wouldn't allow him to have his natural Afro  
19   out for a lineup. You made that decision, right?

20          A    Myself and the DA, yes.

21          Q    And you wouldn't allow him to have his hair in  
22   cornrows the way it was in the arrest photo. You made  
23   that decision, right?

24          A    Correct.

25          Q    The only thing you wanted to do was hide his



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1 hair, right?

2 A I wanted it all to be the same.

3 Q Sir, you wanted to hide his hair. Tell the jury,  
4 yes?

5 A No.

6 Q I didn't think you would say that.

7 That's because when you testified earlier and  
8 said that you wouldn't let him be in a lineup with an Afro  
9 and then you said you wouldn't let him be in the lineup  
10 with his braids in, the way it was in the arrest photo, do  
11 you understand that you took his hair away? Do you agree  
12 with that? You took his hair away from him, didn't you?

13 A No.

14 Q Sir, how many of the other individuals that you  
15 had as fillers had cornrows?

16 A None.

17 Q As a matter of fact, the people that you had as  
18 fillers were all police officers, right?

19 A Correct.

20 Q Darrell Shim, tell the jury how old he is?

21 A I have no idea how old he is.

22 Q Do you know that he's nearly 40 years old?

23 A No.

24 Q By the way, Darrell Shim, tell us what police  
25 department he's from?

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1 A I don't know.

2 Q Mr. Bellamy, Steven Bellamy, you know him, don't  
3 you?

4 A I know of him.

5 Q Been on the force for a while, hasn't he?

6 A I have no idea.

7 Q What force is he on?

8 A He's Nassau County.

9 Q How old is he?

10 A I don't know.

11 Q How tall is he?

12 A I don't know.

13 Q Corey Blackwell, common spelling, what force is  
14 he from?

15 A Unknown.

16 Q How old is that man?

17 A I don't know.

18 Q You wanted to be fair though, right?

19 A Correct.

20 Q How old is Mr. Galloway?

21 A I don't know. I would be guessing.

22 Q Sir, you saw his arrest photo though, didn't you?

23 A Correct.

24 Q You saw the photo that has on it his date of  
25 birth, doesn't it?



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1 A I didn't look at his date of birth.

2 Q It didn't make a difference to you how old the  
3 people were in the photos, right?

4 A As long as they matched the description, that's  
5 the only thing that mattered to me.

6 Q Sir, if you put a man in there that was 65 years  
7 of age, would that match the description?

8 A I don't know. I don't know what that man looks  
9 like.

10 Q That's my point. You don't know because you say  
11 you don't even know what his age is, do you?

12 A I don't.

13 Q Therefore, how could you pick people that were  
14 supposed to be similar?

15 A Because, when they came to the squad, if they  
16 looked like him, they were going to go into the lineup.

17 Q Sir, you made a decision that they looked like  
18 him?

19 A That they were -- yeah, that they looked --

20 Q Like black men?

21 A No. They looked fair.

22 Q They looked fair?

23 A Correct.

24 Q Sir, number six --

25 MR. BREWINGTON: Can we have that picture,

BB

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1 please? Can you put that on the Presenter?

2 MR. SCHALK: One second.

3 MR. BREWINGTON: With the Court's  
4 permission, we'll use the Elmo, please?

5 THE COURT: Sure.

6 (Whereupon, the above-mentioned item was  
7 published to the jury.)

8 Q Sir, can you see the screen from there?

9 A That thing is in the way.

10 THE COURT: Why don't you go down?

11 Q Come on down. Why don't you stand over by the  
12 lectern?

13 Now, on the screen we have the People's  
14 exhibit which is the lineup. This was taken by  
15 Detective McLaughlin, right?

16 A Yes.

17 Q Crime scene?

18 A Crime scene.

19 Q This gentleman down here, Mr. Bellamy, he's the  
20 one we were talking about before. How tall is he?

21 A I don't know.

22 Q How tall is Mr. Galloway?

23 A I don't know.

24 Q You wanted to be fair, right?

25 A Correct.



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1 Q So if you wanted to be fair, wouldn't it be  
2 accurate to -- please stay away from my notes, by the way,  
3 please.

4 A I'm not looking at them.

5 Q I didn't think you would. I'm just giving you  
6 fair warning.

7 You wanted to be fair. So when you picked  
8 people, didn't you also know that there was a description  
9 of this individual with regard to his height?

10 A The height meant nothing to me.

11 Q I know that but that's not my question. My  
12 question is did you understand that part of the  
13 description in this case dealt with height, yes or no?

14 A No.

15 Q No one told you that, right?

16 A Right.

17 Q Mr. Bellamy is almost 6-foot 2, isn't he?

18 A I don't know.

19 Q You saw him, didn't you? You had to look at him  
20 to see if he looked similar. That's what you told the  
21 jury.

22 A Correct, facial features.

23 Q You actually looked at him face to face, didn't  
24 you?

25 A Yeah.

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1 Q How tall is he? He's your height, isn't he?

2 A Counsel, you keep asking a question I don't know  
3 the answer to.

4 Q You don't remember?

5 A I don't know.

6 Q Sir, you did, at some point, see his height,  
7 didn't you?

8 A I don't know how tall he is.

9 Q At some point, did you see his height, yes or no?

10 A Yes, I guess.

11 Q This individual, what type of facial features,  
12 did he have, number six?

13 A He was a male black with a slight mustache.

14 Q Tell me about his cheek bones?

15 A I have no idea about them.

16 Q Tell me about his eyebrows, flat nose, narrow  
17 bridge nose, East African, West African, do you know?

18 A No.

19 Q This individual, what neck size does he have? He  
20 looks almost look a weight lifter, doesn't he, number  
21 four?

22 A I have no idea.

23 Q How tall is that gentleman? Do you know how tall  
24 he is? Let me make sure I have his name. Number four --  
25 oh, that's Khary, K-H-A-R-Y, William. Do you know what



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1 force he's from?

2 A No.

3 Q How old is number two, that would be  
4 Mr. Blackwell?

5 A Unknown.

6 Q See how round his face is there. You agree with  
7 his face being round, right, looking at number two?

8 A Counsel, he looks like everybody else in that  
9 picture.

10 Q They all look alike, don't they?

11 Please have a seat.

12 A Excuse me?

13 Q Please have a seat.

14 So when you put this lineup together, you say  
15 that you saw Mr. Galloway's arrest photo, right?

16 A Correct.

17 Q And his arrest photo showed cornrows. I think  
18 that was the term you used, right?

19 A If that's what they are called, yes.

20 Q Let me show you Defendant's D in evidence.

21 MR. BREWINGTON: Thank you, Officer.

22 Q Is that the arrest photo that you saw?

23 A I believe it is.

24 Q Except it had some other information written  
25 around it, but the picture is the picture, right?

BB

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1 A I believe it is, yes.

2 Q Those cornrows, that's not cut short to the hair,  
3 is it -- cut short to the head?

4 A I think it is.

5 Q You think that cornrows is the same as having  
6 hair cut short to the head?

7 A Yes.

8 MR. BREWINGTON: One second, Judge?

9 THE COURT: Take your time.

10 Q With regard to this lineup that you did conduct,  
11 the one on the 14th, did anybody ever tell you that the  
12 person that was described that committed this crime was  
13 approximately five-ten or five-eleven?

14 A No.

15 Q By the way, the order for this, His Honor ordered  
16 a lineup, right?

17 A It was a court order, yes.

18 Q Did you ever see the order?

19 A No.

20 Q Did you know that the order required for  
21 Mr. Galloway to stand in a lineup?

22 A No.

23 Q Have you seen the lineup's order since then?

24 A No.

25 Q An you wanted to be fair, right?



People - Ross - Cross

1 A Yes.

2 Q And if the order said that he was to stand in a  
3 lineup, what did you have him do?

4 A I don't know if the order said stand.

5 Q Sir, I said, if the order said for him to stand,  
6 you tell the jury what you had Mr. Galloway do?

7 A Just like we had done on every other lineup, they  
8 sit.

9 Q Well, you had him sit, right?

10 A Correct.

11 Q And would it be accurate to say that at the time  
12 that you had him sit, you also had the other individual  
13 sitting, right?

14 A Everybody sat.

15 Q And when they sat, please tell the jury how a  
16 witness can discern the individual's height?

17 A We are not there to do the height.

18 MR. BREWINGTON: Move to strike as  
19 unresponsive.

20 THE COURT: Sustained.

21 Q Can you answer my question?

22 A You can't tell somebody's height.

23 Q If the person says that the person who shot him  
24 was 5-foot 10 or 5-foot 11, and all the other people in  
25 that room are 5-foot 10 and 5-foot 11 or taller, and

People - Ross - Cross

1 Mr. Galloway is 5-foot 5, wouldn't that be a  
2 distinguishing factor in favor of Mr. Galloway?

3 A If they were standing, sure.

4 Q And if they were sitting, you take away that  
5 distinguishing factor; isn't that correct?

6 A Yeah, I guess so. Yeah.

7 Q The description -- by the way, sir, the  
8 description that you were trying to have people fit was a  
9 description of people with hair cut short to the head,  
10 right?

11 A I testified to what the description was, a male  
12 black, short hair, medium skin.

13 Q Hair that was short or cut short to the head,  
14 right?

15 A Short hair, yes.

16 Q Just when you say short hair, was it short hair  
17 or was it cut short to the head, do you recall?

18 A I think I testified to that, Counselor. Short  
19 hair.

20 Q Sir, can you answer my question?

21 A Short hair.

22 Q On the 5th of August -- do you still have the  
23 photograph of the Afro?

24 A No.

25 Q On the 5th of August?

BB



People - Ross - Cross

1 MR. BREWINGTON: Show the witness, please, H  
2 in evidence.

3 Q You would call that an Afro, right?

4 A Yes.

5 Q would you agree with me that that's not cut close  
6 to the head?

7 A Yes.

8 Q And that the other people that were placed in the  
9 lineup -- what did their hair look like compared to that?

10 A It was short. They had short hair.

11 MR. BREWINGTON: Judge, can we take a quick  
12 break?

13 THE COURT: We'll take a break. Please  
14 don't talk about the case.

15 (Whereupon, a brief recess was taken.)

16 THE CLERK: Recalling case on trial, the  
17 People against Galloway.

18 Let the record reflect the attorneys are  
19 present, the defendant is present, and there are no  
20 jurors present at this time.

21 THE COURT: Application?

22 MR. SCHALK: Judge, just so the Court is  
23 aware, Detective Lipson is available for testimony  
24 after Detective Ross. I had said to Howard, if there  
25 was an issue, perhaps we should address it now, for

People - Ross - Cross

1 COURT OFFICER: Jurors entering.

2 (Whereupon, the jury entered the courtroom  
3 and resumed their respective seats.)

4 THE CLERK: Let the record reflect the jury  
5 is, again, present and properly seated. The witness  
6 is on the stand.

7 Detective, you are reminded you are under  
8 oath.

9 CONTINUED CROSS

10 BY MR. BREWINGTON:

11 Q Sir, do you still have H in front of you?

12 A Yes.

13 Q Now, you would agree with me that -- and I think  
14 we ended with this -- that's not, the photograph of  
15 Mr. Galloway, is not with hair cut short to his head,  
16 correct?

17 A Correct.

18 Q And you would also agree with me, sir, that all  
19 the other people that were in this lineup had hair that  
20 was cut short to their head, right?

21 A Correct.

22 Q Would it be accurate to say that Mr. Galloway was  
23 the only one with hair the length that is depicted in that  
24 photograph?

25 A Yes.

BB



People - Ross - Cross

1 Q Now, at some point the lineup did take place on  
2 the 14th, and on that date, when people were placed in  
3 their seat, you made some allowances for their height,  
4 didn't you?

5 A Yes.

6 Q You had Mr. Galloway sit on two phone books,  
7 right?

8 A Correct.

9 Q So you knew that there was a height issue, didn't  
10 you?

11 A No. It's the policy of the police department.

12 Q Sir, you knew that there was a height issue,  
13 policy or not. It's not a policy to make everybody sit on  
14 a phone book, is it?

15 A No. It's policy to make everybody the same  
16 height.

17 Q Here is my question. It's not the policy to have  
18 everybody sit on a phone book, right?

19 A No.

20 Q Not a policy to have them sit on two phones  
21 books, is it?

22 A No.

23 Q You had him sit on two phone books, didn't you?

24 A I believe I did.

25 Q The reason you did that was because his height

People - Ross - Cross

1 was so much less than at least three of the people that  
2 were on that lineup, correct?

3 A I don't know how many people he was smaller than.

4 Q Sir, isn't it true that, of at least three of the  
5 people in that lineup, they didn't sit on phone books, did  
6 they?

7 A I don't recall who sat on phone books.

8 Q Sir, you did the lineup, didn't you?

9 A Yes.

10 Q And you're here testifying because this man has  
11 been charged, right?

12 A Correct.

13 Q So you don't have any memory of how many people  
14 sat on phone books?

15 A No.

16 Q But you do recall that Mr. Galloway, the person  
17 that was accused in this case, was made to appear to be  
18 the same height as everybody else, based on sitting on  
19 phone books, right?

20 A Correct.

21 Q Therefore, his height was taken from him, right?  
22 whatever his height was, it was -- it no longer became a  
23 factor for him in terms of identification, right?

24 A Correct.

25 Q Sir, what was the height of the people -- of the



People - Ross - Cross

1 person that was given to you?

2 A I was never given a height.

3 Q When you did place hats on the individuals, you  
4 said it was to be fair to Mr. Galloway, right?

5 A Correct.

6 Q Isn't it true that you placed hats on the  
7 individuals because you believed that Mr. Galloway had  
8 changed his appearance?

9 A In that --

10 Q Yes or no?

11 A It was because the appearance was different, yes.

12 Q And you did that as per the court order, right?

13 A Did what?

14 Q Put hats on people as per the court order?

15 A I don't know if it's in the court order that we  
16 put hats on. I don't know.

17 Q You didn't see the court order, did you?

18 A No.

19 Q Did you give this testimony, sir, at the previous  
20 proceeding, page 238, line ten:

21 "QUESTION: And the hats were placed on the  
22 head -- withdrawn.

23 "QUESTION: And the hats that were placed on  
24 the head was for what purpose, please tell the Court?

25 "ANSWER: The hats were placed on the heads

People - Ross - Cross

1 of everybody, because the defendant had changed his  
2 appearance, as per the Court order."

3 Did you give that testimony?

4 A Yes.

5 Q You never saw the Court order, did you?

6 A No.

7 Q And the defendant, according to you, didn't  
8 change his appearance because he came looking like what is  
9 depicted in D, right? Correct? Correct?

10 A Can you ask the question again? I want to make  
11 sure I give the right answer.

12 Q Sure. The defendant had changed his appearance  
13 because he came on the 14th looking like that picture?

14 A No, he did not.

15 Q Sir, do you remember giving testimony earlier  
16 when I asked you if that's what he looked like on the  
17 date, that being the 14th of August, and you said yes? Do  
18 you recall giving that testimony, yes or no?

19 A Yes.

20 Q Sir, you were told by Detective Dluginski that  
21 the hair was cut short to the head, weren't you?

22 A The description I received from Detective  
23 Dluginski --

24 Q Sir, can you answer that question? Yes or no?

25 A No.

BB



People - Ross - Cross

1 Q Did you give this testimony, page 233 of the  
2 previous proceeding, Judge, and I believe that happened on  
3 November 7th, 2008.

4 You recall giving testimony then, right?

5 A I testified. I don't recall the date.

6 Q Do you recall being asked questions under oath?

7 A Yes.

8 Q You raised your hand and swore to tell the truth  
9 like you did today?

10 A Yes.

11 Q Did you give this testimony, line three:

12 "QUESTION: Would it be also correct to say  
13 that the description, as given by  
14 Detective Dluginski, indicated that the perpetrator  
15 of this crime, the shooter, was described as having  
16 hair cut short to the head?

17 "ANSWER: Correct."

18 Didn't you give that sworn testimony before?

19 A Yes.

20 Q And when you say today that that wasn't given to  
21 you, which one is not true?

22 A The description was short hair.

23 Q Sir, tell which one is not true, which day? You  
24 have the choice of two.

25 A They are both the same thing.

People - Ross - Cross

1 Q Sir, when you were told by Detective Dluginski,  
2 which you denied before, that the hair was cut short to  
3 the head, you said that he did tell you and you said  
4 correct, didn't you?

5 A It's the same thing.

6 Q Sir, did you say correct?

7 A It's --

8 Q Did you say correct, sir?

9 A Correct.

10 Q When you said correct, you didn't misunderstand  
11 my question, did you?

12 A No.

13 Q You also indicated that these individuals had  
14 similar characteristics, right?

15 A Correct.

16 Q We went through the exhibit, I think it was 33,  
17 that was up on the screen about the similar  
18 characteristics, and I asked you about the characteristics  
19 of all the individuals. Remember, me asking about those  
20 individuals?

21 A Yes.

22 Q You couldn't tell us what the characteristics of  
23 their faces really were, could you?

24 A No.

25 Q Sir, the fillers that you did here -- and by the



People - Ross - Cross

1 way, the number six one, do you know the person that was  
2 in the number six, the one that looked like a thumb print?

3 A No.

4 Q Do you know who Jimmy Lee is?

5 A Nope.

6 Q Do you know how dark Jimmy Lee's skin is?

7 A No.

8 Q Was Jimmy Lee sitting on phone books, by the way?

9 A I don't recall. I don't know.

10 Q What police department is Mr. Lee from?

11 A I don't know.

12 Q How long is his hair?

13 A It's short hair.

14 Q How is his bridge work?

15 A Unknown.

16 Q By the way, sir, the gentleman, three, Darrell  
17 Shim, do you know he's from the Freeport Police  
18 Department?

19 A No.

20 Q Do you know what color his eyes are?

21 A No.

22 Q Do you know what hazel eyes are?

23 A Do I know what hazel eyes are? Yes.

24 Q Did you look in his eyes?

25 A No.

People - Ross - Cross

1 Q what was the description of the eyes of the  
2 individual?

3 A Never got a description of the eyes.

4 Q And you wanted to be fair to Mr. Galloway, right?

5 A Correct.

6 Q Do you think -- withdrawn.

7 Being fair to him -- withdrawn.

8 would you agree with me that, if height were an  
9 issue in this case, taking away his height is not fair?

10 A would I agree with you?

11 Q Yes.

12 A No.

13 Q You wouldn't. Okay.

14 sir, would you agree with me that, if hairstyle  
15 were an issue in this case and you took away his  
16 hairstyle, that wouldn't be fair, would it?

17 A would it be fair?

18 Q would it be fair to take away his hairstyle?

19 A That's why we put hats on.

20 Q Because you did take away his hairstyle, didn't  
21 you?

22 A Yes.

23 Q And you took away his hairstyle -- if it were a  
24 distinguishing factor, you take away his hairstyle, aren't  
25 you taking away something that could help prove his



People - Ross - Cross

1 innocence, yes or no?

2 A No.

3 Q By the way, sir, with regard to the description  
4 of the individuals that became fillers, the gentleman that  
5 was in four -- can we see the photograph again, please?

6 MR. BREWINGTON: Showing the witness 33.

7 Thank you, Officer.

8 Q The description of the gentleman who was in seat  
9 number four, please tell the jury how -- withdrawn.

10 Please tell the jury, how dark was the beard that  
11 that gentleman had? How many days' growth did it look  
12 like to you?

13 MR. SCHALK: Objection. Calls for  
14 speculation.

15 THE COURT: If he can answer, I'll let him.

16 A Unknown.

17 Q Mr. Galloway, how many days of growth did he  
18 have? Or do you know if he even shaved?

19 A Unknown.

20 Q Does it look like Mr. Galloway ever put a razor  
21 to his face?

22 A I have no idea.

23 Q Mr. Bellamy, the mustache, the one in number one.  
24 Right? Just note his head. See how high his head is  
25 above everybody else's?

People - Ross - Cross

1 A Looks pretty even to me.

2 Q Just so we're clear, your testimony to this jury  
3 is that Mr. Bellamy's head is not above everybody else; is  
4 that what you are swearing to?

5 A It appears to me they are all pretty close.

6 Q Not my question.

7 A That's my answer.

8 Q I know that's your answer. I'll ask again.  
9 Maybe you can answer that one.

10 My question to you, sir, is Mr. Bellamy's head  
11 above the others, yes or no?

12 A Doesn't appear to be, no.

13 MR. BREWINGTON: Judge, can we put this back  
14 up on the Presenter?

15 THE COURT: Sure.

16 (Whereupon, the above-mentioned item was  
17 published to the jury.)

18 Q Sir, can you see from there?

19 A Yes, I can.

20 Q If we draw a line straight across the top of  
21 these individuals, do you see where Mr. Bellamy's head is?

22 A Counsel, that looks pretty close to me.

23 Q I didn't ask you if it was pretty close. I asked  
24 if it was above.

25 A I say no.

BB



People - Ross - Cross

1 Q This individual that I was asking about, number  
2 six -- coming back to this so we are clear -- this person  
3 had a mustache?

4 A Slight, yes.

5 Q You can see that, right?

6 A Yes.

7 Q You can see his mustache. Is that what you are  
8 swearing to in front of this jury, yes or no?

9 A Yes. Yes, he has a mustache.

10 Q That's not my question. Please answer my  
11 question as I pose it to you.

12 Are you swearing that you can see a mustache on  
13 that man in this picture?

14 A Yes.

15 MR. BREWINGTON: I'm finished with this  
16 right now.

17 Q The picture with the Afro -- when Mr. Galloway  
18 appeared with his hair out, not in cornrows, you attempted  
19 to cut his hair, didn't you?

20 A No.

21 Q Sir, did you go get clippers in preparation of  
22 cutting his hair, yes or no?

23 A No.

24 Q Never happened, right?

25 A Never happened.

People - Ross - Cross

1 Q Therefore -- oh, by the way, sir, at the time  
2 that Mr. Galloway came for the lineup on August 5th, was  
3 his lawyer there?

4 A I don't know if he ever got there. I believe we  
5 called him and told him the lineup wasn't going to go on,  
6 but I'm not a hundred per sure.

7 Q By the way, how long was Mr. Galloway at the  
8 precinct when his hair was like this, as depicted in H?

9 A Couple of hours.

10 Q And during that couple of hours, you were trying  
11 to decide what to do, right?

12 A I had discussion with Detective Dluginski about  
13 what we were going to do, yes.

14 Q And, sir, have you ever had a pair of yellow and  
15 black shears to cut hair?

16 A No.

17 Q Ever cut a defendant's hair?

18 A No, I haven't.

19 Q Sure about that?

20 A Positive.

21 Q Now, on the date of the actual lineup, what time  
22 did Mr. Galloway reach the precinct?

23 A Some time between eleven and twelve o'clock.

24 Q Sir, didn't he get there at 10:00 a.m.?

25 A No, I believe between eleven and twelve.

BB



People - Ross - Cross

1 Q Is there anything that would document that?  
2 Isn't there a blotter that tells when people come into the  
3 precinct?

4 A Yes.

5 Q Do you have that blotter with you?

6 A No.

7 MR. BREWINGTON: May we have that produced,  
8 please?

9 MR. SCHALK: I'm not in possession of the  
10 blotter at this time, your Honor.

11 THE COURT: Apparently Mr. Schalk doesn't  
12 have it. I don't want to delay the proceedings.

13 MR. BREWINGTON: I don't want to delay  
14 either. I would ask it be produced and, perhaps, we  
15 can have it by tomorrow.

16 THE COURT: Okay.  
17 Can you do that?

18 MR. SCHALK: Yes.

19 Q Sir, at the time that the photo was taken of 33,  
20 which is the lineup, you had a chance to look at the  
21 photo, didn't you?

22 A Today, yes.

23 Q Sir, my question was at that time.

24 A No. He took the photo -- I didn't see that photo  
25 until we went to the hearings months later.

People - Ross - Redirect

1 MR. BREWINGTON: Judge, I believe I'm done.  
2 One second, please?

3 No further questions for this witness at  
4 this time, Judge, reserving my right to recall him  
5 when we get the blotter back.

6 REDIRECT EXAMINATION

7 MR. SCHALK:

8 Q So the record is clear, how many of the fillers  
9 had cornrows on August 14, 2008?

10 A How many fillers?

11 Q How many fillers had cornrows?

12 A None.

13 Q If hats were not used, the only one in the lineup  
14 with cornrows would have been the defendant, correct?

15 A Correct.

16 Q When, if ever, on August 14th, 2008, did you  
17 receive any objection to using hats by the representative  
18 for the defendant?

19 MR. BREWINGTON: Objection.

20 THE COURT: I'm going to allow it.

21 A I never received objection.

22 Q You began to explain on cross-examination the  
23 procedure for having a participants in the lineup sit.  
24 will you explain that procedure, sir?

25 A Yes, Nassau County policy procedure is, in the



People - Ross - Redirect

1 lineup, everybody sits. You try to get them the same  
2 height. That's why we do put certain people on phone  
3 books.

4 Also, the procedure states every article of  
5 clothing will be covered and the only thing that will be  
6 shown will be the face. That's why you have the sheets.

7 In my 14 years, I have done a hundred lineups the  
8 same exact way.

9 Q You stated that looking at the -- Defendant's  
10 D -- you were being asked questions by the defense, during  
11 the course of cross-examination, about change of  
12 appearance. He was asking a yes or no question and you  
13 were looking to explain yourself.

14 Please do so as pertains to the change of  
15 appearance you saw?

16 A Yes, when we -- let me -- when I came in contact  
17 with him on August 14th, he, again, had his hair out. He  
18 then put his hair back into cornrows and that's when the  
19 hats went on.

20 Q The photo -- I'm sorry. I'm done with that.

21 The photograph that was taken of the lineup,  
22 People's 33, the five-by-seven, who took the photograph?

23 A The Crime Scene detective, McLaughlin.

24 Q Did he produce a copy of that photo for you that  
25 day on a digital camera or was this 35 millimeter roll

People - Ross - Recross

1 film?

2 A I don't know what kind of film it was, but I  
3 never saw that photo until the hearings.

4 Q I'm sorry. Until what?

5 A Until the hearings.

6 MR. SCHALK: Nothing further, Judge. Thank  
7 you.

8 THE COURT: Recross?

9 MR. BREWINGTON: Oh, yes.

10 RECROSS EXAMINATION

11 BY MR. BREWINGTON:

12 Q How long does it take to put somebody's hair in  
13 cornrows? Please tell the jury.

14 A I don't know, Counsel.

15 Q How long did it take him to put his hair back in  
16 cornrows?

17 A Well, he was in the precinct by about  
18 eleven o'clock. The lineup didn't go off until  
19 four o'clock.

20 Q Sir, are you saying that this man braided his own  
21 hair in the precinct -- braided -- withdrawn.

22 Are you saying that this gentleman, on the 14th,  
23 braided his own hair?

24 A Yes.

25 Q And put it in cornrows?

BB



## People - Ross - Recross

1 A Correct.

2 Q You watched him do it?

3 A I didn't watch the whole procedure. I was busy.

4 But yes, he did.

5 Q Which hands were handcuffed?

6 A What do you mean which hands were handcuffed.

7 Q Isn't he a prisoner?

8 A Yes.

9 Q Isn't he cuffed to the bench?

10 A He's secured in an arrest room and can't get out.

11 Q Sir, that not question. My question was was he  
12 handcuffed to a bench, yes or no?

13 A Part of the day, yes.

14 Q How many hands does it take to cornrow somebody's  
15 hair, sir, much less your own?

16 A I don't have cornrows. I don't know.

17 Q So you don't know, do you?

18 A No.

19 Q When you said that he cornrowed his own hair, you  
20 lied, didn't you?

21 A No, I did not.

22 Q Sir, you never saw him cornrow his hair, did you?

23 A Yes, I did.

24 Q With which hand?

25 A I don't know. Both. I don't know.

## People - Ross - Recross

1 Q Did he have his hand like this down to the bench?  
2 How did he do it? Tell the jury how he did that?

3 A He was unhandcuffed in the arrest room and he put  
4 his hair into cornrows.

5 Q Sir, you uncuffed a prisoner who was in your  
6 custody in the arrest room and let him have his hands  
7 free; is that what you are saying?

8 A Yes.

9 Q That's not consistent with policy, is it?

10 A It is too.

11 Q Sir, if I bring in the rules and regulations of  
12 Nassau County and show you that a prisoner is supposed to  
13 be secured at all times when he is alone, you're going to  
14 tell me that you follow policy; is that your sworn  
15 testimony, yes or no?

16 A That's -- that is my testimony.

17 Q Did you follow procedure, yes or no?

18 A Yes.

19 MR. BREWINGTON: Judge, I want to recall  
20 this witness after lunch.

21 THE COURT: All right. We have time.

22 MR. BREWINGTON: I'm going to keep going.

23 Q Now, with regard to your claim that this  
24 individual, that being Mr. Galloway, cornrowed his own  
25 hair, is it your sworn testimony that you watched him do



## People - Ross - Recross

1 it?

2 A I saw him doing it, not the entire time. I was  
3 busy the entire day.

4 Q Did you watch him cornrow his hair at any time,  
5 yes or no?

6 A Yes.

7 Q How did he do it? Show the jury what actions he  
8 took to put his hair in cornrows?

9 A I don't know how he does it. I don't know how to  
10 do it.

11 Q I know you don't know how to do it because you  
12 have never seen it done. My question to you is -- tell  
13 the jury how you swear that you saw this man putting  
14 cornrows in his hair, what did he do to manipulate his  
15 hair?

16 A I don't know.

17 Q Sir, did you ever give testimony previously that  
18 when Mr. Galloway arrived at the Third Precinct the second  
19 time his hair was already cornrowed?

20 A No.

21 Q Who was it that transported Mr. Galloway to the  
22 Third Precinct on the 14th of August?

23 A I believe it was Detective Dluginski and I.

24 Q I'm sorry?

25 A Detective Dluginski and I.

People - Ross - Recross

1 Q Detective Dluginski saw Mr. Galloway's hair,  
2 didn't he, based on him being in his presence?

3 A Yes.

4 MR. BREWINGTON: Judge, I can't find my  
5 place. I apologize. I'll look and try to find it  
6 for when we recall this witness this afternoon.

7 Q Sir, when Mr. Galloway was in the lineup on the  
8 14th of August and he was sitting there with the hat on,  
9 the cornrows that you say he had underneath his cap, you  
10 already testified that, when you saw him, he looked like  
11 his arrest photo, do you remember saying that?

12 A When the lineup went off, he looked like that,  
13 yes.

14 Q So, therefore, when -- if he looked like what's  
15 depicted in Defendant's D, there was no reason to put a  
16 cap on him, was there?

17 A Yes, there was.

18 Q That's because the cornrows didn't match the  
19 description, right?

20 A Because he was --

21 Q Sir, that's because the cornrows didn't match the  
22 description, right?

23 A Correct.

24 MR. BREWINGTON: Judge, I reserve my right  
25 to recall this witness.



Proceedings

1 MR. SCHALK: I have no further questions.

2 THE COURT: Thank you.

3 (Whereupon, the witness was excused from  
4 the witness stand.)

5 THE COURT: Let me see counsel.

6 (Whereupon, an off-the-record conversation  
7 took place at the bench.)

8 THE CLERK: We are on the record, the People  
9 against Galloway, in Judge's chambers.

10 Defense counsel, do you waive your client's  
11 appearance?

12 MR. BREWINGTON: Yes, for purposes of this  
13 proceeding.

14 THE COURT: I have considered both of your  
15 arguments with respect to the pedigree statement of  
16 five-eight. I think Mr. Brewington is correct.

17 MR. SCHALK: Your Honor, may I be heard for  
18 the purposes of the record?

19 The cases that were cited in Rodney that  
20 Mr. Brewington pointed you to were cases in which the  
21 questioning was an essential element of the crime  
22 charged, such as an immigration cases, a question  
23 with regards to criminal impersonation where he may  
24 be asked for his name and he changes the name back to  
25 his original name, which I would submit would be

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1 MR. BREWINGTON: We call ADA Joe LaRocca.

2 MR. SCHALK: He's not outside the room.

3 MR. BREWINGTON: Then we'll take

4 Detective Ross.

5 THE COURT: May I see counsel for a moment?

6 (Whereupon, an off-the-record conversation  
7 took place at the bench.)

8 THE CLERK: Detective, you are reminded you  
9 are still under oath from previous testimony.

10 Thank you.

11 CROSS-EXAMINATION

12 BY MR. BREWINGTON:

13 Q Sir, the hair under the hats, that being under  
14 Mr. Galloway's hat, what was the condition of the hair  
15 underneath the hat, braided, not braided?

16 A Braided.

17 Q Like in cornrows, as you mentioned?

18 A Yes.

19 Q Is it true, sir, that, if the hair under the hat  
20 was in cornrows, you might not have used the hat?

21 A What do you mean, if it's true?

22 Q Yeah.

23 A He would have been the only person that had  
24 cornrows.

25 Q And you're not sure if you would have used the



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1 hat, right?

2 A No, I would have used the hat.

3 Q Did you give this testimony, page 244 of the  
4 prior proceeding, starting at line six:

5 "QUESTION: Sir, did you ever see him with  
6 short hair?

7 "ANSWER: I saw him -- I saw an arrest photo  
8 of him.

9 "QUESTION: And that arrest photo was from  
10 what year?

11 "ANSWER: This year.

12 "QUESTION: And the arrest photo showed  
13 cornrows, didn't it?

14 "ANSWER: Correct.

15 "QUESTION: And you're calling that short  
16 hair?

17 "ANSWER: Correct.

18 "QUESTION: That's your interpretation of  
19 short hair?

20 "ANSWER: Yes.

21 "QUESTION: Just so we're clear, the  
22 description that you got when you are setting up the  
23 lineup was for short hair, not cornrows, correct?

24 "ANSWER: Correct.

25 "QUESTION: So if Mr. Galloway had cornrows,

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1 you wouldn't have used hats?

2 "ANSWER: I don't know if I would have used  
3 hats or not."

4 Did you give that testimony?

5 A Yes.

6 Q And, sir, when you testified earlier that  
7 Mr. Galloway had his hands free enough to do -- to -- to  
8 braid his own hair, how long were his hands free so that  
9 he could do that, sir?

10 A Exact time, I don't know.

11 Q I'm not asking exact time. You can tell the jury  
12 approximately. Was it an hour, two hours?

13 A A little bit -- I don't know. I don't know. I'm  
14 not giving you time I don't know.

15 Q He was the person that was in -- he was in your  
16 station house, right?

17 A Correct.

18 Q And you were the one in charge of the lineup,  
19 right?

20 A Yes.

21 Q How long was he left alone with his hands free?

22 A He was in the arrest room with his hands free for  
23 a while to do his hair.

24 Q I'm not asking for a while. Tell us how long?

25 A I don't know. I said that several times.



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1 Q And he was left there to do his hair; is that  
2 correct?

3 A Yes.

4 Q Who told him he had to do his hair?

5 A No one told him he had to do his hair.

6 Q Who suggested that he was going to do his hair?

7 A Nobody suggested to do his hair.

8 Q So he just started doing his hair?

9 A No. We said the lineup was going to go on today.  
10 He wanted to do his hair back into braids.

11 Q You're telling us that Mr. Galloway -- just so we  
12 are clear, now you are saying Mr. Galloway's hair, when he  
13 came in, you're saying it wasn't in braids, right?

14 A Correct.

15 Q Because it wasn't in braids -- withdrawn.

16 Based on the reading, when they put the hat on  
17 his head, was it standing on top his head at all?

18 A No. It fit like everybody else's hat.

19 Q Sir, do you know what the department rules and  
20 regulations for the Nassau County Police Department are?

21 A Yes.

22 Q What are those? Please tell the jury.

23 A What rules and regulations are you referring to?

24 Q Those of the Nassau County Police Department that  
25 deal with the responsibilities of officers with regard to

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1 maintenance and detention of persons in their custody?

2 A Well, the -- are you talking about the  
3 handcuffing rules?

4 Q I'm asking, first, tell us what the rules and  
5 regulations are? What is that body of rules and  
6 regulations?

7 A Sir, we have hundreds of rules and regulations.

8 Q Yes, you do. My question is, is that encompassed  
9 in a body of something that's called guidelines, rules and  
10 regulations? Is there a book?

11 A There's rules and regulations, yes.

12 Q And it's in a book, right, in a loose leaf  
13 binder, small loose leave binder, isn't it?

14 A No.

15 Q It's not?

16 A No.

17 Q Ever seen it in a loose leaf binder?

18 A No. It's on the computer.

19 Q You've never seen the different articles with  
20 department rules in a loose leaf binder in the time that  
21 you have been an officer?

22 A Years ago it used to be in a binder. Now all the  
23 rules and regulations are on the computer. When we need  
24 to refer to the rules and regulations, we go on the  
25 computer and we print them out.



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1 Q They also exist in book form, don't they?

2 A Not that I'm aware of. They might, but not that  
3 I'm aware of.

4 Q With regard to the handcuffing of prisoners,  
5 there are rules and regulations about leaving prisoners  
6 unsupervised in a room by themselves while in the  
7 precinct?

8 A Yes, there are.

9 Q And those rules require the person be secured,  
10 right?

11 A They need to be -- they need to be safe and  
12 reasonable. You are talking about unsupervised, correct?

13 Q Yeah.

14 A He was not unsupervised.

15 Q You said you left him, you said the door -- that  
16 he was in the office, your testimony, right? He was  
17 alone, right?

18 A He was in an eight by twelve --

19 Q Was he alone?

20 A Yes.

21 Q Nobody was sitting in the room with him, was  
22 there?

23 A No.

24 Q This wasn't a holding cell, was it?

25 A It is an arrest cell, yes, it is.

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1 Q It's not an interview room?

2 A No.

3 Q And in that area is there a place with cuffs that  
4 attach either to a bench or desk?

5 A There is a bench with handcuffs, yes.

6 Q Is it an actual cell with bars?

7 A No. It's a -- it's an eight-by-twelve concrete  
8 room with a steel door, tempered glass, and a big viewing  
9 area, which we sit right outside, maybe as close as I am  
10 to the stenographer.

11 Q It's your testimony that Mr. Galloway was in  
12 there doing his hair?

13 A Correct.

14 Q Sir, the cornrows that he eventually -- you say  
15 that he had when you put the hat on him, what did the back  
16 of the hair look like?

17 A What do you mean the back of the hair? What  
18 cornrows look like. I don't know how you want me to  
19 describe that.

20 Q My question is, you saw the back of his head?

21 A During the lineup, no.

22 Q At any time, sir, not during the lineup?

23 A Yeah, during the day, of course. I saw his whole  
24 body during the day.

25 Q By the way, when you saw his whole body, you saw



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1 him stand up, right?

2 A Yes.

3 Q Did he stand next to you?

4 A Beside me, yes.

5 Q How tall are you?

6 A I'm six-two.

7 Q Mr. Galloway, you saw the back of his head. Was  
8 that cornrowed too?

9 A When he was finished, yes. Not when we first  
10 picked him up, no.

11 Q So he was able to cornrow the front of his head  
12 and also do the back of his head sufficiently so that the  
13 cornrows were in place, right?

14 A They were on his head. Whether they were in  
15 place or not, I don't know, Counselor.

16 Q Did he have the use of a mirror?

17 A No.

18 Q Did he have the use of any hair grease?

19 A No hair grease, no.

20 Q Did he have the use of a comb?

21 A Nope.

22 Q How did he part his hair, sir, do you know?

23 A No, I don't.

24 Q So it's your sworn testimony this man was able to  
25 part his hair and cornrow his hair without a comb or Dixie

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1 Peach, or whatever the grease is that would be utilized  
2 for the scalp to grab hold?

3 A He had no grease, no.

4 Q And he had no comb, correct?

5 A Correct.

6 Q Still standing by that story?

7 A Yes.

8 MR. BREWINGTON: All right. I have no  
9 further questions of this witness any more.

10 REDIRECT EXAMINATION

11 BY MR. SCHALK:

12 Q Detective, could you tell the members of the  
13 jury, with regards to the rules and regulations as it  
14 pertains to handcuffing defendants, what the policy of  
15 Nassau County Police is?

16 A When we place somebody under arrest on the  
17 street, there are different rules from when you are inside  
18 the facility. When you are in the street, for a felony,  
19 he has to be handcuffed in the rear and transported with  
20 his hands cuffed in the rear. A misdemeanor can be  
21 handcuffed in the rear or the front, up to our discretion.  
22 Once they are in the station house, there are many times a  
23 person is not handcuffed.

24 Q Could you tell jury what times a defendant in  
25 custody could not be handcuffed when they are in the squad



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1 or the precinct of the Nassau County Police?

2 A When they are being interviewed, when we are  
3 taking a written statement from them, when they are  
4 eating, when they are going to the bathroom, when they are  
5 being fingerprinted, when they are being photographed, or  
6 any other time deemed necessary.

7 Q How about when this defendant was in the lineup,  
8 was he handcuffed?

9 A No.

10 Q You explained to Mr. Brewington, with regards to  
11 supervision, supervision and being handcuffed, how would  
12 you describe where this defendant was and the level of  
13 supervision being exerted over him that day?

14 A He was in an eight-by-twelve concrete -- it's  
15 called an arrest room, a cell room. It has a steel door,  
16 tempered glass, and a big viewing window which has  
17 tempered glass. There's eight detectives that sit  
18 outside, the closest one being as close as I am to the  
19 stenographer to the door.

20 Q What ability would this defendant have to get out  
21 of that room?

22 MR. BREWINGTON: Objection.

23 THE COURT: I'll let the jury hear it.

24 A None whatsoever.

25 Q How is it locked?

BB

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1 A It has two deadbolt locks on the door.

2 Q What time did you arrive at the precinct with the  
3 defendant on August 14th?

4 A 11:40.

5 Q What time did the lineup get conducted?

6 A Four o'clock in the afternoon.

7 MR. SCHALK: Nothing further.

8 MR. BREWINGTON: Nothing.

9 THE COURT: Thank you, Detective.

10 (Whereupon, the witness was excused from  
11 the witness stand.)

12 THE COURT: Mr. LaRocca is outside?

13 MR. SCHALK: Yes.

14 THE COURT: Joe LaRocca.

15 J O S E P H L A R O C C A, a witness called on behalf of  
16 the defendant, having been duly sworn, testified as  
17 follows:

18 THE CLERK: In a clear, loud voice, please  
19 state your name with spelling and your county of  
20 residence.

21 THE WITNESS: Joseph LaRocca, L-A capital R,  
22 O-C-C-A, Nassau County.

23 THE CLERK: Thank you.

24 (Continued on next page; nothing deleted.)  
25